

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TONYA LEWIS-WILLIAMS, et al.,

Plaintiffs,

No. C 22-06119 WHA

v.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT,

Consolidated Cases:
C 22-09193 WHA
C 22- 07720 WHA

Defendant.

FINAL CHARGE TO THE JURY
(FOR PHASE TWO)

1.

Members of the jury, it is now my duty to instruct you on the law that applies to the second phase of this case. A copy of these instructions will be available in the jury room for you to consult as necessary.

Many of the instructions I gave to you on Friday will also apply to this second phase. Although you may recall some of these instructions, it is vital that you listen attentively to understand how these instructions apply in this latter half of the case.

2.

It is your duty to find the facts from all the evidence. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or

not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathies. You will recall that you took an oath promising to do so at the beginning of the case. This means that you must decide the case solely on the evidence before you. Perform these duties fairly.

In following my instructions, you must follow all of them and not single out some and ignore others. You must not read into these instructions, or into anything the judge may have said or done, as suggesting what verdict you should return.

3.

I will now instruct you about what is evidence in this case. The evidence from which you are to decide what the facts are consists of:

1. The exhibits that have been received into evidence;
2. The sworn testimony of witnesses who appeared in court, on both direct and cross-examination, regardless of who called the witnesses;
3. The sworn testimony of witnesses in prior proceedings; and
4. Evidence in Phase One may be considered by you in this phase two.

4.

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. Trial counsel are not witnesses. What they say in opening statements, closing arguments, and elsewhere is not evidence. Your interpretation of the evidence controls.
2. A suggestion in a question to a witness by trial counsel or the judge is not evidence unless it was adopted by the answer of the witness.
3. An objection to a question to a witness by trial counsel or argument in support of an objection is not evidence. If an objection to a question was

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1 7.

2 In deciding the facts in this case, you may have to decide which testimony to believe and
3 which testimony not to believe. You may believe everything a witness says, part of it, or none
4 of it. In considering the testimony of any witness, you may take into account:

- 5 1. the opportunity and ability of the witness to see, hear, or know things
6 testified to;
7 2. the memory of the witness;
8 3. the manner of the witness while testifying;
9 4. the interest of the witness in the outcome of the case, and any bias or
10 prejudice;
11 5. whether other evidence contradicted the testimony of the witness;
12 6. the reasonableness of the testimony of the witness in light of all evidence;
13 and
14 7. any other factors that bear on believability.
15

16 8.

17 Any witness may be impeached and thus discredited by contradictory evidence or by
18 evidence that, at some other time, the witness has said or done something (or has failed to say
19 or do something) that is inconsistent with the present testimony. If you believe that any
20 witness has been impeached and thus discredited, you may give the testimony of that witness
21 the credibility, if any, you think it deserves.
22

23 Discrepancies in a witness's testimony, or between a witness's testimony and that of
24 other witnesses, do not necessarily mean that such a witness should be discredited. Inability to
25 recall and innocent misrecollection are common. You should consider whether a discrepancy
26 pertains to an important matter or only to something trivial.
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9.

However, a witness willfully false in one part of that witness's testimony, is to be distrusted in other parts. You may reject the entire testimony of a witness who has willfully testified falsely on a material point, unless, from all the evidence, you believe that the probability of truth favors that witness's testimony in other particulars.

10.

You have heard testimony from witnesses referred to as "expert witnesses." These are persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions. Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case. If an expert witness was not present at the events in question, his or her opinion is necessarily based on an assumed set of circumstances. In evaluating the opinion during the trial, you should take into account the extent to which you do agree or do not agree with the circumstances assumed by the "expert witness."

11.

All parties are equal before the law and a governmental entity, like BART, is entitled to the same fair and conscientious consideration by you as any party.

Under the law, a governmental entity is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, or officers performed within the scope of authority.

12.

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true. To put it differently, if you were to put the evidence favoring a plaintiff and the evidence favoring a defendant on opposite sides of a scale, the party with the burden of proof on the

1 issue would have to make the scale tip somewhat toward its side. If the party fails to meet this
2 burden, then the party with the burden of proof loses on that issue. Preponderance of the
3 evidence basically means “more likely than not.”

4 13.

5 You should decide the case as to each plaintiff separately.

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7 14.

8 I will now instruct you on the law for the second phase in this case.

9 As you will recall, plaintiffs are suing under the Civil Rights Act of 1964, a federal
10 statute, and more specifically under Title VII, it is unlawful for an employer to discriminate
11 against any person on account of that person’s religious beliefs. If an employee cannot do a
12 job requirement on account of a sincerely held religious belief, then the employer must try to
13 accommodate the employee by adjusting his or her job requirements so long as the adjustment
14 imposes no undue hardship on the employer. An employer, however, is not required to
15 accommodate an employee’s religious practice or belief if such accommodation would impose
16 an undue hardship on the employer. On Friday, you rendered a unanimous verdict that BART
17 had not proven an undue hardship with respect to each of the six plaintiffs.

18 With this verdict, we now proceed to phase two of our bifurcated trial. I will now give
19 you an overview of the issues of this second phase and instruct you accordingly.

20
21 15.

22 You must decide whether each plaintiff has proven his or her prima facie case. To prove
23 a prima facie case, each plaintiff must prove the following three elements by a preponderance of
24 the evidence:

- 25 1. He or she had a bona fide religious belief, the practice of which conflicted
26 with an employment requirement, in this case a vaccination requirement;
27 2. He or she informed BART of the bona fide religious and conflict; and
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1 Social, political, economic, or secular philosophies, however, are not religious beliefs
2 protected by Title VII. However, overlap between a religious and political view does not place
3 it outside the scope of Title VII's religious protections, so long as that view is part of a
4 religious belief system and is not simply an isolated teaching.

5 18.

6 If you find that a plaintiff has proven their prima facie case, and that BART has not
7 proven that it could not reasonably accommodate the plaintiff without undue hardship (as you
8 decided in the first phase), you must then move on to the third party of your analysis, which is
9 damages.

10 It is the duty of the Court to instruct you about the measure of damages. Damages means
11 the amount of money that will reasonably and fairly compensate the plaintiff for any injury you
12 find was caused by BART.

13 If you find for any individual plaintiff, it is for you to then determine what damages, if
14 any, that plaintiff has proven. Everyone agrees that plaintiffs Raymond Lockett and Ryan
15 Rivera have proven their prima facie case and for them the only issue is the extent of damages,
16 if any, proven by them.

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18 19.

19 The party seeking damages (here, the plaintiff) has the burden of proving damages by a
20 preponderance of the evidence.

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22 20.

23 If you find that BART discriminated against a plaintiff based on his or her religion, then
24 you must determine an amount that is fair compensation for that plaintiff's damages. You may
25 award compensatory damages only for injuries a plaintiff proves were caused by BART's
26 wrongful conduct.

21.

You may reward as actual damages an amount that reasonably compensates a plaintiff for any lost wages and benefits, taking into consideration any increases in salary and benefits, including pension, plaintiff would have received had the plaintiff not been discriminated against.

You must reduce any award by the amount of the expenses a plaintiff would have incurred in making those earnings.

22.

Any award for future economic damages must be for the present cash value of those damages. Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts that you find the damages would be received.

The rate of return to be applied in determining present cash value should be the interest that can reasonably be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill.

23.

A plaintiff has and had a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages, such as getting another job.

The defendant has the burden of proving by a preponderance of the evidence:

1. That the plaintiff failed to use reasonable efforts to mitigate damages; and
2. The amount by which damages would have been mitigated.

24.

You may award damages for any pain, suffering or mental anguish that a plaintiff experienced as a consequence of BART's unlawful discrimination. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these

1 elements of damage. Any award you make should be fair in light of the evidence presented at
2 trial.

3 In determining the amount of any damages you decide to award, you should be guided by
4 common sense. You must use sound judgment in fixing an award of damages, drawing
5 reasonable inferences from the facts in evidence. On the other hand, the law does not require
6 that a plaintiff prove the amount of his or her losses with mathematical precision, but only with
7 as much definiteness and accuracy as circumstances permit.

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9
10 25.

11 I will give you a special verdict form which sets forth the questions you must answer as
12 to each plaintiff. The first question will be whether a plaintiff has proven his or her prima facie
13 case. Depending on how you answer that question, you will move to the final question: what,
14 if any, damages has plaintiff proven?

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16 26.

17 That's the end of the law. I will now turn to the final part of the instructions. The
18 foreperson you elected for the first phase of trial will preside over the deliberations and speak
19 for you here in Court for this second phase.

20 You will then discuss the case with your fellow jurors to reach agreement if you can do
21 so. Your verdict as to each claim and as to damages, if any, must be unanimous. Each of you
22 must decide the case for yourself, but you should do so only after you have considered all of
23 the evidence, discussed it fully with the other jurors, and listened to the views of your fellow
24 jurors.

25 Do not be afraid to change your opinion if the discussion persuades you that you should.
26 Do not come to a decision simply because other jurors think it is right. It is important that you
27 attempt to reach a unanimous verdict but, of course, only if each of you can do so after having
28

1 made your own conscientious decision. Do not change an honest belief about the weight and
2 effect of the evidence simply to reach a verdict.

3 I will give you a special verdict form to guide your deliberations. Please address the
4 questions in the order listed.

5
6 27.

7 Some of you have taken notes during the trial. Whether or not you took notes, you
8 should rely on your own memory of what was said. Notes are only to assist your memory.
9 You should not be overly influenced by the notes. When you go into the jury room, Angie, the
10 courtroom deputy, will bring in to you the trial exhibits received into evidence to be available
11 for your deliberations. Angie will also provide you with an index to them, assuming the
12 lawyers have been able to jointly prepare the index.

13 28.

14 As I noted before the trial began, when you retire to the jury room to deliberate, you will
15 have with you the following things:

- 16
- 17 1. All of the exhibits received into evidence;
 - 18 2. A work copy of these jury instructions for each of you;
 - 19 3. A work copy of the verdict form for each of you; and
 - 20 4. An official verdict form.

21 29.

22 When you recess at the end of a day, please place your work materials in the brown
23 envelope provided and cover up any easels with your work notes so that if my staff needs to go
24 into the jury room, they will not even inadvertently see any of your work in progress.

25 Angie will be outside the jury room during your deliberations. If it becomes necessary
26 during your deliberations to communicate with me, you may send a note through Angie, signed
27 by your foreperson or by one or more members of the jury. No member of the jury should ever
28 attempt to communicate with me except by a signed writing, and I will respond to the jury

1 concerning the case only in writing or here in open court. If you send out a question, I will
2 consult with the lawyers before answering it, which may take some time. You may continue
3 your deliberations while waiting for the answer to any question. Remember that you are not to
4 tell anyone — including me — how the jury stands, numerically or otherwise, until after you
5 have reached a unanimous verdict or have been discharged. Do not disclose any vote count in
6 any note to the Court.

7 30.

8 You have been required to be here each day from 7:45 a.m. to 1:00 p.m. Now that you
9 are going to begin your deliberations, however, you are free to modify this schedule within
10 reason. For example, if you wish to continue deliberating in the afternoons after a reasonable
11 lunch break, that is fine. The Court does, however, recommend that you continue to start your
12 deliberations by 7:45 a.m. If you do not reach a verdict by the end of today, then you will
13 resume your deliberations tomorrow and thereafter.

14 If you do not reach a verdict by the end of the day, please place your work materials in
15 the brown envelope provided and cover up any easels with your work notes so that if my staff
16 needs to go into the room, they will not even inadvertently see any of your work in progress.

17 It is very important that you let Angie know in advance what hours you will be
18 deliberating so that the lawyers may be present in the courthouse at any time the jury is
19 deliberating.

20 31.

21 You may only deliberate when all of you are together. This means, for instance, that in
22 the mornings before everyone has arrived or when someone steps out of the jury room to go to
23 the restroom, you may not discuss the case. As well, the admonition that you are not to speak
24 to anyone outside the jury room about this case still applies during your deliberation.

25 32.

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27 After you have reached a unanimous agreement on a verdict as to all the plaintiffs, your
28 foreperson will fill in, date and sign the verdict form and advise the Court that you have

1 reached a verdict. The foreperson should hold onto the filled-in verdict form and bring it into
2 the courtroom when the jury returns the verdict.

3 Thank you for your careful attention. The case is now in your hands. You may now
4 retire to the jury room and begin your deliberations.

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6 **IT IS SO ORDERED.**

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8 Dated:

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11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE
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